IN RE SYED MOHAMMAD SYED ISA & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL WAHAB PATAIL J
[CRIMINAL REVISION NOS: 43-03-2001, 43-05-2001, 43-06-2001 & 43-07-2001]
6 FEBRUARY 2001

CRIMINAL PROCEDURE: *Police investigation - Remand order - Duty of magistrate - Whether must record reasons for order - Whether must balance right of personal liberty and public interest - Production and consideration of copy of entries of investigation diary - Whether mandatory - Criminal Procedure Code, ss. 117, 119, 323*

CRIMINAL PROCEDURE: *Police investigation - Remand proceedings - Investigation diary - Contents and entries of - Whether must state direction and progress of investigation - Copy of entries in investigation diary - Whether to be transmitted to the court - Whether to state grounds for remand - Criminal Procedure Code, ss. 117, 119*

CRIMINAL PROCEDURE: *Revision - Remand order - Propriety of - Magistrate disposing of 72 remand applications within 1 1/2 hours - Whether applications heard and considered adequately - Whether applications heard and considered separately and individually - Criminal Procedure Code, ss. 117, 119, 323*

The seven detainees in this case had been arrested for various crimes and ordered to be remanded for different length of days pursuant to s. 117 Criminal Procedure Code ('CPC'). The facts showed that among the reasons given to the court for the detention were that the police: (i) were unable to complete investigation within 24 hours; (ii) needed time to conduct more detailed investigations; (iii) needed time to complete investigation papers; (iv) needed time to recover items related to the crime; (iv) needed time to study the suspect's background; and (v) were looking for others involved in the crime. The facts further showed that on the day in question, inclusive of the remand applications herein, the learned magistrate had considered more than 70 remand applications and had disposed them all in a matter of 1 1/2 hours. Taking cognisance of these facts and circumstances, the learned judge herein had exercised his discretion and called up the cases for revision under s. 323 CPC for the purpose of determining the correctness, legality or propriety of the remand orders so issued by the learned magistrate.

Held:

[1] In considering remand applications, the magistrate must balance fairly between the right of personal liberty of the individual who has not yet been proven guilty, against the equally important public interest that crimes be investigated effectively and that offenders be brought to justice. (p 252 g)

[2] Detention under s. 117 CPC is for the purpose of enabling the police to complete investigations. It is warranted if investigation is conducted diligently. Section 117 does not authorise detention of a person at leisure to conduct further investigation. If detention is warranted, the diligence with which the police pursued their investigations is an appropriate consideration as to the length of detention to be ordered at a time or at all. (pp 257 g-h & 261 e)

[3] Stating in an s. 117 application that the remand applied for is to enable police to complete investigations is not sufficient. The 'purpose' of the application is not to be confused with, and is distinct from, the 'reasons or grounds' to support the application for remand in order to serve that purpose. (p 253 g)

[3a] Further, 'enabling the police to complete investigation' cannot be interpreted as authorising interrogation. A person may be asked questions but he does not have to answer and has the right to remain silent. Thus grounds such as to obtain a cautioned statement from the suspect or to enable the suspect to be questioned or interrogated upon are all invalid. (p 253 h-i)

[4] The copy of entries in the investigation diary is the only source upon which the magistrate could gauge the need for remand. The entries must therefore describe adequately the state of investigations and the diligence with which investigations had been carried out. The statement of circumstances ascertained through the investigation must: (i) indicate the direction of investigation to complete the investigation; (ii) explain the necessity of such further investigation; and (iii) explain why remand of the suspect is necessary. (p 253 d-e)

[5] The only reasonable ground given for the application to remand Syed Mohammad Syed Isa herein is that his associate in the bag snatching activities was still at large. The facts showed however that no effort was made by the police to seek out that person. There was also no entry of any investigation shown to the magistrate. In the circumstances, the remand order of six days is revised to three days. (p 256 h)

[5a] Mohd Rosdi Jaafar was 15 years old when arrested and therefore the police ought to inform his parents or relatives of the arrest. It was also evident that Mohd Rosdi had told police that he had an associate and could show where he hid the stolen wallet. This did not call for a 14-day remand as applied for. There was also no information given to the court as to whether any effort has been made to trace the associate or to recover the stolen wallet. Clearly, it was taken for granted that the boy could be put into the lock-up to await appearance on Monday before the magistrate. The remand order of six days is revised to two days. (p 257 a-i)

[5b] In the case of Thiagarajah Pelaniandy, the accuracy of the investigation diary seemed questionable. This apart, no grounds were given in the investigation diary to lead anyone to believe that the arrested person was involved in the alleged crime. The police just did not choose to give the magistrate any information beyond stating that, based on police information, they had proceeded to his house and arrested the suspect. Clearly, in granting the remand order the magistrate had acted on blind faith and assumed that the police information not made available to her had connected the arrested person with the break-in discovered on 26 December 2000. The remand order must be set aside.
(p 259 b-d)

[5c] As for Rajis Seeni Mai Deen and & 3 other detainees herein, the reasons given to the court, namely – to investigate the background of the suspects, to find the owner of the house in which the two packets of heroin were recovered, to find the others involved and to complete investigation papers – did not require the detention of these suspects. In addition, the record did not show that the question of remand was considered in relation to each suspect as an individual. Clearly, in the ordinary type of criminal offence, no remand order ought to have been granted. However, given the seriousness of the offence, a remand order is warranted. On the facts a shorter remand is appropriate and therefore the remand order is revised from five days to three days.
(p 260 c-g)

[Order accordingly.]

Case(s) referred to:
Artatran AIR [1956] Or 129 ***(refd)***
Chong Fook Kam & Anor v. Shaahul & Ors [1968] 2 MLJ 50 ***(refd)***
Daulatram AIR [1933] Or 315 ***(refd)***
Hashim Saud v. Yahaya Hashim [1977] 1 MLJ 259 ***(refd)***
Hashim Saud v. Yahya Hashim & Anor [1977] 2 MLJ 116 ***(refd)***
Polis Di Raja Malaysia v. Keong Mei Cheng Audrey [1994] 3 CLJ 362 ***(refd)***
PP v. Audrey Keong Mei Cheng [1997] 4 CLJ 702 ***(refd)***

Re The Detention of R Sivarasa & Ors [1997] 1 CLJ 471 ***(refd)***
Saul Hamid Pakir Mohamed v. PP [1987] 2 CLJ 257 ***(refd)***
State v. P Sugathan [1988] Cr LJ 1036 ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 117(i), (iii), 119(i)(d)
Drug Dependants (Treatment & Rehabilitation) Act 1983, s. 4(1)(b)
Federal Constitution, art. 5(1)

For the respondent - Umar Saifuddin Jaafar DPP

Reported by WA Sharif

JUDGMENT

Abdul Wahab Patail J:
This revision has been called in the course of general supervision of the subordinate courts by the High Court. In reviewing applications for further detention of arrested persons (suspects) beyond 24 hours under s. 117 (remand orders) of the Criminal Procedure Code (CPC) in the magistrate's court, certain matters came to light and which requires remedial attention.

In the morning of 5 February 2001, the Kuala Lumpur magistrates' court dealt with 57 applications for remand orders. The same magistrate dealt with 15 applications under s. 4(1)(b) of the Drug Dependants (Treatment & Rehabilitation) Act 1983. These 72 applications were dealt with between 11.45am and 1.15pm. While most applications were in respect of one suspect, many were in respect of between 2-5 suspects, and in one case it involved 15 suspects. The learned magistrate had approximately 75 seconds for each application, and orders for periods of remand between three days and eight days were granted. This speed raises questions whether the remand applications were heard and considered adequately.

Section 117(iii) CPC provides that in authorising remand the magistrate shall record his reasons for doing so. The requirement is mandatory: *Re The Detention of R Sivarasa & Ors* [1997] 1 CLJ 471. Thus in *Saul Hamid Pakir Mohamed v. Public Prosecutor* [1987] 2 CLJ 257, Edgar Joseph Jr J (as he then was), held that the President of the Sessions Court had erred when he failed to record his reasons for extending the order for remand. It underlines the need to consider the application carefully. It is imperative to record his reasons so as to enable review of the remand order if occasion should arise, as when an application for further remand is made. Failure to do so may gravely prejudice the person so remanded: *Daulatram* AIR [1933] Or 315. Remand orders should not be taken lightly or as a matter of mere formality (*Artatran* AIR [1956] Or 129). A bare statement accepting the reasons given in an application is thus insufficient compliance with s. 117(iii) CPC. It does not uphold the spirit and substance of s. 117(iii) CPC. The importance of these

reasons is best understood from the perspective that a remand order deprives a person of his personal liberty, a fundamental right guaranteed by the Federal Constitution.

Article 5(1) of the Federal Constitution guarantees that:

> (1) No person shall be deprived of his life or personal liberty save in accordance with law.

The law authorising remands is s. 117 CPC. It is trite that laws depriving a person of his liberty must be interpreted and applied strictly. Section 117 CPC provides:

> 117. Procedure where investigation cannot be completed within twenty-four hours
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> (i) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall forthwith transmit to a magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time [produce the accused before such magistrate].
>
> (ii) [The magistrate before whom an accused person is produced] under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be [produced before a magistrate having such jurisdiction] [or, if the case is triable only by the High Court, before himself or another magistrate having jurisdiction with a view to committal for trial by the High Court.]
>
> (iii) A magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

While ordinarily evidence supporting an application is placed before a court or judicial officer by way of a witness or affidavit, s. 117(i) CPC has made a special provision to do so in remand applications, that is, by way of a copy of the entries in the diaries maintained by the investigating officer under s. 119 CPC. Production of the copy of the entries of the investigation diary to the magistrate is mandatory: *PP v. Audrey Keong Mei Cheng* [1997] 4 CLJ 702 CA. In *Re The Detention of R Sivarasa & Ors*, failure to transmit a copy was held to be fatal. The duty to keep an investigation diary is commanded by s. 119 CPC.

Section 119 prescribes:

> 119. Diary of proceedings in investigation
>
> (i) Every police officer making a police investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary setting forth:
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> (a) the time at which the order, if any, for investigation reached him;
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> (b) the time at which he began and closed the investigation;
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> (c) the place or places visited by him; and
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> (d) a statement of the circumstances ascertained through his investigation.
>
> (ii) Notwithstanding anything contained in the Evidence Act 1950 [Act 56], an accused person shall not be entitled, either before or in the course of any inquiry or trial, to call for or inspect any such diary: Provided that if the police officer who has made the investigation refers to the diary for the purposes of sections 159 or 160 of that Act, such entries only as the officer has referred to shall be shown to the accused, and the Court shall at the request of the officer cause any other entries to be concealed from view or obliterated.

The copy of the entries of the investigation diary kept under s. 119 places before the magistrate evidence of when the order to investigate reached him, when investigation was begun, what he has done in respect of the investigation, and what he has found out from the investigations he had carried out until then. It shows whether diligent efforts in investigation have been made, and whether such investigations produced reasonable grounds for believing that the accusation or information is well founded.

It must be borne in mind that in considering remand applications, the magistrate must balance fairly between the right of personal liberty of the individual who has not yet been proven guilty, against the equally important public interest, the object that is the duty of the police, that crimes be investigated effectively and offenders be brought to justice. The latter is an equally important consideration. Raja Azlan Shah FCJ (as he then was), writing the judgment of the Federal Court in *Hashim bin Saud v. Yahya bin Hashim & Anor* [1977] 2 MLJ 116 FC had this to say:

> We too often think of the administration of justice simply as it relates to the protection of the rights of an accused person, that is, to know the charge against him, to be represented by counsel, to be confronted by witnesses, to have an impartial trial. But justice does not mean only for the accused; it also means the interests of the State, and not enough is paid to the interests of the State. We have a shocking prevalence of crime, and of crimes of violence, infractions of the plainest requirements of civilised society about which there is no debate.

> Our capacity to protect life and property itself is in question. There is a manifest failure to secure, through an adequate administration of our criminal laws an appropriate punishment of crimes, the deterrent effects which are in large part the object of these laws. This failure is due in part to the defects in a procedure which favours delay and obstructions to the cause of justice. The chief cause is probably a laxity of public sentiment, the most difficult thing to correct.

In *State v. P Sugathan* [1988] Cr LJ 1036 it was similarly observed:

> In some quarters, a feeling seems to exist that the object of criminal law is to protect the rights of the accused and that the criminal justice system is envisioned as a sentinel of the rights of the accused. It is not so. The law is the sentinel of rights, of the society and of the individual. The rights of the criminal defendant will be as zealously guarded, as the cause of public justice. Pre-trial detention in itself is not an evil, nor opposed to the basic presumption of innocence. Pronouncements of the Supreme Court have recognised the importance of effective investigation, as much as the rights of the accused.

Since the copy of entries in the investigation diary is the only source upon which the magistrate can gauge the need for remand, the entries must describe adequately the diligence and state of investigations; and the statement of circumstances ascertained through his investigation must indicate a) directions of investigation to complete the investigation, b) the necessity of such further investigation, and c) explain why the remand of the suspect is necessary.

It is necessary to understand clearly the purpose of a remand in order to be able to balance fairly between the right of personal liberty and the public interest that offenders be apprehended and brought to justice. It was held in *Hashim bin Saud v. Yahaya bin Hashim* [1977] 1 MLJ 259, (262E-right) that the purpose of the application for remand is to enable the police to complete investigations. Stating in an application that the remand applied for is to enable police to complete investigations is not sufficient. This purpose of the application is often confused with, but is quite distinct from, the reasons or grounds to support the application for remand in order to serve that purpose.

Enabling the police to complete investigations therefore primarily means preventing a suspect from interfering with witnesses and/or evidence and thereby preventing the police from completing their investigations, and to bring him to court to be charged with his crime. It includes remand to prevent him from absconding, if there are reasonable grounds to believe he is likely to do so. Enabling the police to complete investigations cannot be interpreted as authorising interrogation. A person may be asked questions, but he does not have to answer. He has the right to remain silent. He cannot be interrogated. Thus grounds in an application for remand, that the suspect may be questioned, interrogated or for the purpose of obtaining a cautioned statement are not valid grounds.

It is the magistrate's discretion whether or not to order a remand, and that discretion must be exercised judicially: *Hashim bin Saud v. Yahaya bin Hasim* [1977] 1 MLJ 259. In *Chong Fook Kam & Anor v. Shaahul & Ors* [1968] 2 MLJ 50 it was held that the order of a magistrate in a remand hearing is a judicial act. It was observed by KC Vohrah J in *Re The Detention of R. Sivarasa & Ors* [1997] 1 CLJ 471:

> Section 117 also requires that there be 'grounds for believing that the accusation or information' is well founded for the police officer to make his application for detention. These grounds, needless to say, are subject to judicial scrutiny.

Since completion of investigation is the purpose of the application under s. 117(i) CPC, it cannot itself be the reasons or grounds supporting the application. The entries of the investigation diary provide the foundation upon which the reasons or grounds supporting the application are identified and weighed. Thus the entries in the diary may support the application by showing:

a) diligent investigation in the first 24 hours after arrest, or in the period of remand by the magistrate, shows or continues to show grounds for believing the information or accusation to be well founded;

b) such investigation points to the existence of certain witnesses and/or evidence that is necessary to complete investigations, and

c) such witnesses and/or evidence could be obtained within so many days, but

d) which would be jeopardised if the arrested person were not kept out of circulation by a remand.

If a reason or ground has been relied upon on the occasion of a previous remand application in respect of the same person, then it would be important to explain the reasons for the failure to obtain it in the period of remand previously granted. If the police had previously obtained a remand order, but no diligent investigations were carried out, it is a correct exercise of the magistrate's discretion to refuse the application or to grant only a brief remand.

In *Hashim bin Saud v. Yahaya bin Hashim* [1977] 1 MLJ 259 Harun J dealt with the necessity to keep the magistrate fully informed:

> The purpose of a detention under section 117 CPC therefore is to enable the police to complete investigations. The detention itself is subject to judicial control. The power to detain rests squarely and fully on the magistrate not the police. The magistrate is required to satisfy himself on every occasion if detention is at all necessary and if so to determine the length of time actually required to complete the investigation – section 117(ii) CPC. If he orders detention he must record his reasons for doing so – section 117(iii) CPC. To enable the magistrate to make the decision whether to detain or not the police

> must supply the magistrate a copy of the investigation diary – section 117(i) CPC. This copy of the investigation diary to be transmitted to the magistrate must contain all the particulars as required under section 119 CPC, that is to say, the police must tell the magistrate all they know so far up to time of application and not what they think the magistrate need only know ... .

The importance of attention to the grounds to support the application was dealt with in *Polis Di Raja Malaysia v. Keong Mei Cheng Audrey* [1994] 3 CLJ 362 at p. 365 where Syed Ahmad Idid J commented as follows:

> ... These details provide the true proceedings in the investigation in compliance with what is required by s. 119(1) of the CPC. A copy of this is what the officer must supply the magistrate under s. 117. This to obviate the necessity of the magistrate having to examine the complainant and recording the examination (see Ch. XV and s. 133; compare s. 117(3) with s. 135(2) of the CPC). So I have at this stage to say that the police in this case did not transmit to the magistrate a copy of the proper entries in the diary. This goes against the requirements of s. 117. How then could the magistrate (or Registrar in our case) make any decision to continue detention of the respondent? **As a matter of law, not only must the diary be in the form specified by s. 119 of the CPC but it must also be replete with grounds indicating that the information against the accused (or respondent) is well founded** ... . [emphasis added]

As to judicial scrutiny, it was further observed by KC Vohrah J in *Re The Detention of R. Sivarasa & Ors* [1997] 1 CLJ 471:

> It has to be stressed that a magistrate ought not give a remand order in police custody without his satisfying himself as to its necessity and that the period of remand ought also to be restricted to the necessities of the case (see *Bal Krishna v. Emperor* AIR [1931] Lah 99). If the necessities of the case for remand or further remand are not shown, no remand order should be made.

The onus is always upon the applicant for an order for remand to satisfy the magistrate that an order to remand the suspect is necessary. If no more useful progress can be achieved but the person cannot yet be charged, or that further remand is not necessary because investigation is completed, he should be released on sufficient bail terms to ensure his attendance when required. If the entries in the investigation diary support the conclusion not only that there are reasonable grounds for believing the information or accusation to be well founded, but also that further investigation is needed to fill in gaps in the evidence gathered so far, and it is necessary for such purpose to order further remand, then an order for remand ought to be given. If the grounds or reasons given are not strong, but does not warrant an outright refusal, then a brief period of remand ought to be considered, and the matter may be further reviewed at the time of consideration of the next application, if any. For that reason s. 117 CPC provides that the remand order is given from time to time up to a maximum of 15 days.

At the end of 15 days the prosecution must decide whether to charge the suspect or to release him. It is true that it may be months before post-mortem and chemists' reports are available. In such circumstances the prosecution could decide, either to charge the suspect after the reports are received, or to charge the suspect in court, apply that no plea be taken pending the report and apply to have the accused to be remanded pending trial.

The following remand orders are reviewed, and serves as illustrations:

Syed Mohamad Syed Isa

A complainant had reported having had her handbag snatched on 9 January 2001. The suspect was arrested on 2 February 2001 at 1.05pm. He admitted being involved in bag snatching activities with another person at large within 15 minutes of arrest. He was put in the lockup at 1.45pm. Inspector Gunalan a/l Muniandy recorded in his diary that the suspect was put into the lockup to await being taken to the magistrate's court for remand. The next entry is that he was taken to the magistrates' court at 8.30am on 2 February 2001. The reasons given in the application for remand are that investigation cannot be completed in 24 hours, need to conduct more detailed investigations, his associate being still at large, and to recover the handbags that were thrown away. A remand of 14 days was applied for.

No reason was given why nothing appears to be done between the time of arrest until the appearance before the magistrate, when in fact the suspect was cooperative. Instead 14 days was applied for, and six days remand was ordered from 5 February 2001.

The suspect was held in custody with no investigation being done over the weekend. If the police department and investigating officers carry out no investigations during weekends, then effort should be made to record his statement quickly, and release on bail to appear the following Monday for follow up investigations. While it is clear the police need time to complete investigations, nothing was shown on the entries to support a conclusion that the remand of the suspect himself is necessary to do so.

The only reasonable ground given is that his associate is still at large. On the other hand no effort was recorded to have been made to seek out that person. There is no entry of any investigation. The magistrate should take this into account and order a shorter period of remand of two or three days only. The public interest is better served if suspects know they can be released earlier if they cooperate. The public perception towards law enforcement would also likely improve if the police were seen to respond to cooperation.

The order of remand of six days is revised to three days from 5 February 2001.

Mohd Rosdi bin Jaafar

This suspect is 15 years old. He was caught and handed over to the police by the public in Sg. Wang Plaza as a wallet snatcher. He admitted snatching handbags in shopping plazas. The diary showed the investigating officer was informed at 3.10pm on 2 February 2001 when the suspect was handed over to him. The next entry shows that at 3.25pm he had questioned the boy who told him he would be able to show where his accomplice stayed, and where he hid wallets in the toilet cisterns in Pertama and SOGO Complexes. The next entry shows that at 3.40pm he reported his findings to the senior investigating officer, and at 3.50pm the suspect was put into the lockup to await production before the magistrate for further remand. The next and final entry is on 5 February 2001 when the suspect was taken at 8.30am for an application for remand of 14 days. The reasons given were that investigations cannot be completed within 24 hours, the need to conduct more detailed investigations into the offences and his accomplice, and to recover the stolen wallets hidden in toilet cisterns in Pertama and SOGO Complexes.

Firstly, considering the age of the suspect, the investigating officer should have made an attempt to trace the parents or relatives. Children are less able to represent themselves than adults. They need their parents to appoint counsel if required since they would be unable to do so themselves. This should not be ignored, and even less taken advantage of. It is preferable to release children on bail to be brought back to the station when required, than to detain them in police lockups. There is no entry whether any effort was made to call his parents or relatives.

Secondly, the police was told by the boy that he has an associate, and could show where he hid the stolen wallets. This does not call for a 14-day remand as applied for. No information appears as to whether any effort was made, or why it was not possible, to trace the associate, or to recover the stolen wallets from the toilet cisterns on 2 February 2001 or the next day. It appears taken for granted that the boy could be put into the lockup to await appearance on Monday.

Detention under s. 117 CPC is for the purpose of enabling the police to complete investigations. It is warranted if investigation is conducted diligently. Section 117 does not authorise detention of a person at leisure to conduct further investigation or as to his involvement in other offences.

Even if a detention of five days for this boy is at all warranted in that case, the fact nothing was done between 2 February 2001 and 5 February 2001 should be taken into consideration, and considering his age, and order should be made to inform his parents or relatives.

The order of remand of six days is revised to two days from 5 February 2001 and for his parents or relatives to be ascertained.

Thiagarajah Pelaniandy

The application to remand the suspect Thiagarajah a/l Pelaniandy into police custody shows the suspect had been arrested on 2 February 2001, at about 12.30pm. He was brought to the magistrate for a remand order on 5 February 2001. The police applied for eight days remand. The learned magistrate granted six days.

According to the application, a complainant Mohamed Ashraff bin Bashee Ahamed had reported that on 23 December 2000 he had arranged goods in his store. After finishing he went home. On 26 December 2000 he went to the store and found the back door open and 300 boxes of joss sticks missing. He reported the break-in to the police. The application stated that based on information received, six police officers went to the arrested persons' house on 2 February 2001 and arrested him. The grounds for the application for the remand order were stated as:

i) 'Siasatan tidak dapat diselesaikan dalam tempoh 24 jam'.

ii) 'Untuk mengkaji latar belakang saspek'.

iii) 'Mengesan rakan saspek dan barang kes'.

iv) 'Untuk menyiapkan kertas siasatan'.

According to the copy of entries of the investigation diary, Sgt Perumal a/l Muniandy was informed of the report on 23 December 2000, and met the complainant on the same date at 9pm. He informed his superior officer and was directed to open an investigation paper at 9.30pm. The next entry is that acting on police information he arrested Thiagarajah a/l Pelaniandy on 2 February 2001 at 12.30pm and put him into the lockup at 1.30pm. The next entry is that he directed the CID to conduct preliminary investigation on 3 February 2001 at 10am but Thiagarajah a/l Pelaniandy did not cooperate. The next and last entry is that he was brought to the magistrates court at 9.30am on 5 February 2001.

Firstly, the entries of the investigating officer's actions on 23 December 2001 cannot be right and contradicts the application that the complainant found about the break-in on 26 December 2000 at 16.30pm. Secondly, it also does not help that the portion that was not applicable in "Alasan diterima/tidak diterima" was not crossed out. Thirdly, no grounds were given in the entries of the investigation diary to lead anyone to believe that the arrested person was involved. The arrested person had denied involvement. It was recorded that the suspect did not want to cooperate. The police chose not to give the

magistrate any information beyond stating only that based on police information they had proceeded to his house and arrested the suspect.

In granting the remand order the magistrate had acted on blind faith and assumed that the police information not made available to her connected the arrested person with the break-in discovered on 26 December 2000. Considering the questionable accuracy of the diary mentioned earlier, the magistrate had no basis to decide whether there are reasonable grounds for believing that the arrested person was involved in the offence. Further, the arrested person had been held for nearly 70 hours. It would be more pertinent to explain why the investigation could not be completed within 70 hours, not 24 hours. To check his background, his friends and the stolen goods begs the question as to the quality and value of the police information, and in any case does not require remand of the arrested person. Similarly, completion of investigation papers is purely clerical work on the part of the police.

Clearly this is a remand application that cannot have been granted if the magistrate had more time to consider it.

The remand order is set aside.

Rajis Seeni; Krishnan Chinniah; ThurayamKarpan; Sankar Karuppan

These four suspects were arrested together in a house. The offending item, being two packets containing a substance suspected to be heroin, were found with two of them on the kitchen floor, while the other two were in the same flat. Upon the offending item being found with the two suspects, all four persons in the house were arrested. They had already been remanded between 29 January 2000 and 4 February 2001. The police applied for seven days remand and the magistrate granted five days.

The first ground given is to investigate the background of the suspects. The second is to find the owner of the house. Third is to find others involved. The fourth is to complete the investigation papers.

The main headings of activities of the investigation officer from the arrest are as follows:

27.1.2001	Informed of arrest, received exhibits and copy of report.
28.1.2001	Public holiday - Sunday
29.1.2001	OKT taken for remand, returned from remand
30.1.2001	Recorded complainant's statement, marked exhibits
31.1.2001	Photographed exhibits, send to Chemistry Department, and hand over to chemist

1.2.2001	Federal Territory holiday
2.2.2001	Suspects photographed and fingerprinted; suspects questioned as to their involvement in drugs and the owner of the premises
3 & 4. 2.2001	Long Weekend holiday
5.2.2001	Brought for extension of remand.

There is, again, nothing in the nature of a statement of circumstances ascertained from his investigation (s. 119(i)(d) CPC), which is the primary material upon which a decision whether further remand is warranted can be made. The reasons given do not require the detention of these suspects. It must be borne in mind that a suspect is not obliged to say anything. Thus while he may be questioned, he need not answer. Interrogation, a term that implies that the suspect is compelled to answer, whether by threats, repeated or forceful questioning until he answers, is not only not a ground for a remand order, but it is also an abuse of the remand order to interrogate a person held under remand.

In addition, the record does not show the question of remand was considered in relation to each suspect as an individual. In other words, the circumstances of each individual, as to whether he ought to be remanded or not, are not shown to be separately considered. A remand order must be in respect of each individual separately, for in doing so separately, it helps the magistrate to direct and focus his mind to a consideration of the necessity of ordering that individual to be remanded.

In the ordinary type of criminal offence, no remand order should have been granted. However given the seriousness and nature of the offence, a remand order is warranted. In the circumstances however, a long remand would likely be wasted. A shorter remand would therefore be appropriate and further remand to be considered upon the basis of whether investigation is diligently pursued.

The remand order is revised to three days from 5 February 2001.

Concluding Remarks

Section 117 CPC requires that more investigation should be carried out before an arrest. An arrest should not be the first step in an investigation, except in cases of an arrest in the course of a crime. After information or a complaint is received, it is the investigations that provide the grounds for believing whether the accusation or information is well founded or not. The arrest should ordinarily be the last step in an investigation, that is, to bring him to court to be charged.

Where a person is arrested in the course of commission of a crime, or is arrested after substantial investigation, any further investigations necessary need not require much time. For that reason s. 117 CPC envisages remands of a maximum of 15 days, and places upon the magistrate the discretion to grant reasonable periods of remand from time to time within that limit.

The term "to complete investigations" in the purpose of an application for a remand order does not mean remanding a person while the police begins and proceeds with investigation at its own convenient pace. It assumes that investigation has been commenced, proceeded with reasonable diligence, that such investigation has produced grounds for believing that the complaint or information is well-founded; and that it is necessary for the suspect to be held under remand to prevent him from interfering with investigations or absconding before he is brought to the court to be charged. If he has to be arrested so as to prevent him from absconding or interfering with investigations, then wherever practical, he could be still be released on bail on terms sufficient to ensure his non-interference and attendance when required.

In hearing remand applications, magistrates must consider not only whether the accusation or information is shown to be well-founded, but also whether detention is necessary to ensure he does not interfere with completion of investigations or abscond, with the object that he be charged for the offence, and for no other reason. If detention is warranted, the diligence with which the police pursued their investigations is an appropriate consideration as to the length of detention to be ordered at a time or at all.

Magistrates should not be concerned with the number of applications for remand orders to rush and routinely grant the remand orders so as to finish quickly, even though the stamped form invites the tendency to cross out automatically, particularly on a busy day and the magistrate is running late. The function of the magistrate in remand applications is to adjudicate and ensure that the demand of law enforcement to detain a person does not override the rights of personal liberty, but that a fair balance is achieved considering seriousness of the offence, the diligence and results of investigation, the need to complete investigation and the necessity to remand the suspect. In seeking to cope with the large number of applications, it must not be forgotten that the cornerstone of justice and its administration is fairness. A remand order is an exercise in balancing the rights of personal liberty against the duty of the police and public interest to bring offenders to justice. Fairness requires considering each application and individual on its own merits. Failure to do so will inevitably compromise justice itself.